

ADDITIONAL FEE

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REMARKS

This application pertains to a novel method of protecting an industrial material against infestation by microorganisms. Claims 7 and 9-11 are pending, Claim 8 being cancelled by this amendment.

Claims 7-11 stand rejected under 35 USC 112, first and second paragraphs, as the Examiner sees claims 7 and 8 as failing to differ in scope, and sees claims 10 and 11 as improper, for claiming products containing the claimed active ingredient. Claim 8 has now been cancelled, and claims 10 and 11 amended to no longer claim products containing the claimed active ingredient.

The rejections of claims 7-11 under 35 USC 112, first and second paragraphs, is thereby believed obviated and should now be withdrawn.

Turning now to the art rejection, claims 7-11 stand rejected under 35 USC 103 as obvious over Schaub (A) in view of Ludwig (A') and European Patent 0 393 846 (L').

The Examiner reads the Schaub reference as teaching that cyproconazole is an old fungicide, and that the claimed azole is effective against fungi in the same class.

In the Examiner's view, one skilled in the art would be motivated to use cyproconazole as a fungicide against the target fungi on the wood of the present application with a reasonable expectation that it would be effective, since similar triazoles of the secondary references are seen as effective against wood fungi.

Nothing to be found in any of said references, however, whether taken individually or in any combination would have predicted the astounding effectiveness of Applicants' compounds in Applicants' method, as compared to the prior art.

The accompanying Declaration shows that Applicants' method was 100% effective against the target fungi, whereas methods using the prior art fungicides were only partially, or only slightly effective. This is not just a difference in degree, it is a difference in kind! Applicants' method completely inhibited the fungi - the prior art methods did not!

Nothing in the prior art would have predicted this.

Accordingly, Applicants' invention is in no way rendered obvious by the references cited. The rejection of Applicants' claims under 35 USC 103 as obvious over Schaub, in view of Ludwig and European Patent 0 393 846 should therefore be withdrawn.

In view of the present amendment and remarks it is believed that claims 7 and 9-11 are now in condition for allowance. Reconsideration of said claims by the Examiner is respectfully requested and the allowance thereof is courteously solicited.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Services as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231 on April 6, 1995

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